BANK BUMIPUTRA MALAYSIA BERHAD

v.

MELEWAR HOLDINGS SDN. BHD. & ORS.

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[SUIT NO. 23-180 OF 1988]
28 MARCH 1990

CIVIL PROCEDURE: *Application to transfer proceedings - Local jurisdiction - Section 23 Courts of Judicature Act 1964 - Where cause of action arose - Residential qualifications.*

This is an application by the defendants to transfer proceedings from the High Court at Seremban to the High Court at Kuala Lumpur pursuant to s. 23 of the Court of Judicature Act 1964 (the Act).

The 2nd to the 5th defendant are guarantors to an overdraft facility granted by the plaintiff bank's Kuala Pilah branch to the 1st defendant company who have their registered office in Kuala Lumpur.

The agreement to accept the plaintiff bank's overdraft facility by the 1st defendant was executed in Kuala Lumpur. The 2nd to 5th defendants have respectively stated in their affidavits that they are resident at Petaling Jaya or Selangor. Further, the letters of guarantee on which the plaintiff bank is basing its claim was executed in Kuala Lumpur.

Conversely, the overdraft facility was applied for and duly approved at the plaintiff bank's branch at Kuala Pilah through the 1st defendants account at the said branch. The lands charged to the plaintiff bank as security are also located at Kuala Pilah.

Therefore, the issue before the Court was to decide pursuant to s. 23(a) of the Act, where the cause of Action arose to determine the local jurisdiction, failing which the Courts has to look into the next alternatives i.e., the defendant(s) or place of business (subsection (b)) or then on to the next subsections (c) and (d) of the Act.

Held:

The breach of contract i.e., the failure of the defendant to pay the outstanding sums due occured at Kuala Pilah. Despite the fact that all the transactions were concluded in Kuala Lumpur, the principle cause of action i.e., against the borrower arose in Kuala Pilah and this principle cause of action supersedes the defendants residential qualification under s. 23(b) of the Court of Judicature Act 1964.

[Application dismissed.]

Legislation referred to:
Courts of Judicature Act 1964, s. 23(1)(a), (b), (c), (d)

For the defendants/applicants - Teh Meng Teck; M/s. Cheah & Teh
For the respondent/plaintiff Bank - K. Gunaretnam; M/s. Gunaretnam & Co.

JUDGMENT

Mustapha Hussain J:

Grounds of decisions on the defendants' application by summons-in-chambers to transfer the whole proceedings to the High Court at Kuala Lumpur pursuant to s. 23 of the Courts of Judicature Act 1964 - (summons-in-chambers dated 14 August 1989 - Encl. (24)).

The 2nd to the 5th defendants are guarantors guaranteeing the payment of all dues on the RM1.2 million credit facilities given by the plaintiff bank to the 1st defendant company Melewar Holding Sdn. Bhd. They executed the guarantee on **17 June 1980** before a solicitor in Kuala Lumpur.

The credit facilities of RM1.2 millions were also secured by a charge of Lot 926 EMR 849 Mukim Ampang Tinggi in Kuala Pilah, Negeri Sembilan dated **11 September 1980**.

By the end of April 1988 the outstanding sum due and owing to the plaintiff bank by the 1st defendant amounted to RM2,644,704.59. Notice of demand was sent to the 1st defendant and also notices were sent to the guarantors.

The 1st to the 5th defendants on 14 August 1989 applied by summons-in-chambers to have the proceedings transferred to the High Court in Kuala Lumpur.

In the supporting affidavit the Secretary of the 1st defendant company stated that the plaintiff bank as well as the 1st defendant company have their registered offices in Kuala Lumpur.

The agreement to accept the plaintiff bank's overdraft facilities by the 1st defendant was executed and made in Kuala Lumpur.

The 2nd to the 5th defendants in their affidavits stated that they are staying in Petaling Jaya or Selangor. The agreement to accept the plaintiff bank's overdraft facilities was executed and made in Kuala Lumpur. The letters of guarantee on which the plaintiff bank is basing its claim was executed in Kuala Lumpur.

And above all these, the 2nd to the 5th defendants said the cause of action arose in Kuala Lumpur.

In reply, opposing the application by the defendants, the plaintiff bank's solicitor stated that the Loan/Overdraft facilities were sought by the defendants at the plaintiff bank in Kuala Pilah, Negeri Sembilan. The application for the facilities was approved by the Kuala Pilah Branch and the acceptance was communicated to the plaintiff bank at Kuala Pilah. The money was disbursed by the Kuala Pilah Branch and the 1st defendant's account is still being operated by the plaintiff's Kuala Pilah Branch. The lands charged to the plaintiff bank as security are situated at Kuala Pilah.

The breach of the contract i.e., the failure of the defendants to pay or settle the outstanding sums due to the Kuala Pilah Branch occurred at Kuala Pilah.

The question for the Court to decide is where did the cause of action arise, in Kuala Pilah or in Kuala Lumpur. This is the first question to determine the local jurisdiction, failing which the Court has to look into the next alternative i.e., where the defendants or one of the several defendants resided or has his place of business, then on to the next sub-sections (c) and (d) of s. 23(1) of the Courts of Judicature Act 1964.

One thing is clear that the application for the loan/overdraft facilities was made and approved in plaintiff's Kuala Pilah Branch. The guarantees were forwarded by the Kuala Pilah Branch to the 2nd to 5th defendants who executed them in Kuala Lumpur and returned to and received by the Kuala Pilah Branch. The account of the 1st defendant was opened and still being kept in Kuala Pilah Branch of the plaintiff bank. The land that was charged as security for the loan/overdraft facilities is in Kuala Pilah. Everything except for the signing of the guarantees are in Kuala Pilah.

Where then did the cause of action arise? The moneys were given out from the Kuala Pilah Branch and the 1st defendant the principal borrower failed to carry out its part of the contract in not repaying the money due from it to the Kuala Pilah Branch. In fact on 17 July 1989 the balance due to the plaintiff bank amounting to RM3,006,173.13 cents was confirmed to the Kuala Pilah Branch by the 1st defendant.

Thus it is quite clear the inability of the 1st defendant to remit the amount due from it to the plaintiff bank had caused this action to arise culminating in the plaintiff bank issuing the writ.

As far as the 1st defendant is concerned, the cause of action arose in Kuala Pilah.

As for the guarantors the 2nd to the 5th defendants. They executed their guarantees in Kuala Lumpur. They are either the directors or shareholders of the 1st defendant company which is situated in Kuala Lumpur. Letters of demand addressed to them were received by them in Kuala Lumpur. As far as the 2nd to 5th defendants are concerned, all the transactions were made in Kuala Lumpur. It would then seem that the cause of action i.e., their refusal to pay up for what they guaranteed, arose in Kuala Lumpur.

However, the principal cause of action i.e., against the principal borrower, arose in Kuala Pilah. The 2nd to 5th defendants happened to reside in Kuala Lumpur at the material time. Hence the principal cause of action supersedes their residential qualification.

I therefore hold that the cause of action of all these proceedings arose in Kuala Pilah. What if the 5th defendant happened to reside and work in Penang during the material time? She had to execute the guarantee in Penang before an advocate & solicitor. Should Penang be the local jurisdiction?

On extending the argument a bit further in that the other guarantor the 4th defendant at the material time happened to stay and work in Johore Bahru and he had to execute the guarantee in Johore Bahru. Should Johore Bahru Court be the local jurisdiction for the 4th defendant and at the same time Penang to be the local jurisdiction as far as the 5th defendant is concerned? How absurd?

For the above reasons, the application by the defendants to transfer the proceedings to the High Court of Malaya at Kuala Lumpur is dismissed with costs.

Also found at [1990] 1 CLJ 1246